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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable William H. Alsup, Judge

ORACLE AMERICA, INC.,)	
)	
Plaintiff,)	
)	
VS.)	NO. CV 10-3561-WHA
)	
GOOGLE, INC.,)	
)	
Defendant.)	
_____)	

San Francisco, California
Tuesday, November 10, 2015

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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Official Reporter

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CHRISTA ANDERSON, ATTORNEY AT LAW
ELIZABETH EGAN, ATTORNEY AT LAW**

Tuesday - November 10, 2015

10:50 a.m.

P R O C E E D I N G S

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THE CLERK: Calling CV 10-3561-WHA, Oracle America vs. Google, Inc.

Counsel, can you please state your appearances for the record.

MS. HURST: Good morning, Your Honor. Annette Hurst on behalf of Oracle.

THE COURT: Welcome.

MR. PURCELL: Good morning, Your Honor. Dan Purcell here on behalf of Google, with my partner Christa Anderson and our colleague, Beth Egan.

THE COURT: Welcome.

How can I help you?

MS. HURST: Your Honor, we have resolved a number of issues on the motion, but there is one remaining -- one or two remaining disputes.

The issue is the production of -- well, we had asked for a list of financials in the motion in order to assess what further things we thought should be produced, but I think we can go straight to the further point of what we thought should be produced, which is P&Ls for Google, all of Google's businesses, Your Honor.

And the dispute here is over expense allocation related to

1 what expenses are allowed to be deducted against Android
2 revenues in the unjust enrichment calculation.

3 In response to interrogatory 31, Google produced last week
4 an unallocated expenses spreadsheet, and although we don't
5 understand exactly how they intend to allocate those expenses
6 based on our discussions, we anticipate that they will try to
7 do some straight-line proportion of Android revenues to the
8 firm's revenues and allocate a portion on that basis.

9 Your Honor, we believe that does not meet the test that's
10 already been laid out by the Court causally for the deduction
11 of expenses.

12 In the Court's order on overhead deduction, quoting the
13 *Kamar vs. Russ Berrie* case, the Court said that claimed
14 expenses must be, quote, of actual assistance in the
15 production, distribution, or sale of the infringing product.

16 Your Honor, we believe that in order to demonstrate a
17 causal relationship of those expenses to the Android revenue,
18 we need to see the performance of the entire firm and assess
19 that in order to tease out the presence or absence of a causal
20 relationship.

21 We will move to exclude, if they do on a straight
22 proportional basis, at *Daubert*, but, Your Honor, we would like
23 to be able to prepare our own rebuttal expense calculation, not
24 just rely on trying to exclude theirs.

25 And our experts look at, for example, published reports of

1 the other lines of business that appear to be extremely capital
2 and overhead intensive businesses in which Google has been
3 losing money, things such as moon shots, driverless cars, space
4 elevators, forays into healthcare and transportation, Google
5 Ventures Investing, Google Fiber, Life Sciences, Artificial
6 Brains.

7 These things can be very capital and overhead intensive
8 endeavors, and these unallocated expenses, if they're trying to
9 take expenses that are actually attributable to those losing
10 money lines of business and apply it against Android, we'd like
11 to be able to do that, but we can't without the firm-wide P&Ls,
12 Your Honor.

13 And so really what this is left to boil down to is a
14 dispute over whether they are required to produce their
15 company-wide P&Ls in order to get at these causation issues
16 related to overhead.

17 **THE COURT:** Let me ask you, do these documents exist?

18 **MS. HURST:** Yes, Your Honor. We believe they do,
19 based on our meet and confer discussions. We don't know
20 exactly what they're called. That's why we asked for the list,
21 but we believe that they exist based on our discussions.

22 **THE COURT:** Hold that thought. Let me hear from the
23 other side for a moment.

24 If these exist, why can't you just produce them?

25 **MR. PURCELL:** We don't believe they're relevant,

1 Your Honor.

2 **THE COURT:** Come on. Come on.

3 **MR. PURCELL:** Well, so the --

4 **THE COURT:** It's relevant to their argument. It's not
5 relevant to your argument, but this is still America. They get
6 to make their argument. Maybe they lose. I don't know.

7 **MR. PURCELL:** What we have produced, we have produced
8 the P&Ls for --

9 **THE COURT:** I asked you why you won't produce the
10 things you have. You do have them. You're stonewalling. I'm
11 going to tell the jury you're stonewalling.

12 **MR. PURCELL:** Well, if we're ordered to produce them,
13 we'll produce them.

14 **THE COURT:** I think you should produce them. I'm not
15 saying that this is going to lead to -- I don't want somebody
16 saying later we have to retry this case because Google
17 stonewalled or because Oracle stonewalled. We're going to do
18 it one more time, so, yes, we're going to have more stuff
19 produced than probably is relevant, but there's no way I can
20 tell this now, whether it's relevant or not now.

21 They get a shot to look at it and see -- as counsel said,
22 tease out something and maybe they try to tease out too much
23 and it's just baloney, but they get a shot at it. It's a
24 decent point that counsel has made. They ought to be able to
25 look at your records and see if they can make their argument.

1 **MR. PURCELL:** I understand Your Honor's ruling, and
2 we'll abide by it.

3 I do want to understand it a little bit. So what I think
4 Oracle is asking for is essentially P&L documents for every
5 Google line of business for which such a document exists?

6 We've already produced them for Android. We've produced
7 them for our search and our advertising segments, and we have
8 produced a category of documents, a chart showing unallocated
9 G&A expenses. That's something that Google doesn't allocate
10 across its different lines of business. It's things like real
11 estate costs.

12 The P&Ls do have specific costs specific to each of the
13 lines of business so there is an Android P&L with Android
14 revenue and Android costs. I just want to be sure that we're
15 going to be responsive.

16 **THE COURT:** I don't even know myself. How am I
17 supposed to answer that question? I'm just saying what I heard
18 is a reasonable point.

19 Now, you don't have any showstopper. All you say is it's
20 not relevant. But how --

21 **MR. PURCELL:** Well -- and it -- well, I won't argue
22 further, Your Honor.

23 **THE COURT:** I think it's relevant enough to make you
24 produce it. Whether it's relevant enough to actually go to the
25 jury is a *Daubert* question. But it's impossible for me or the

1 other side to be able to answer that question until they get
2 their hands on it and see what they can make out of it.

3 That's my view from 30,000 feet up. If you want something
4 that's more detailed than that, I can't give it to you now. I
5 think that has to wait until after we see how the data is
6 actually used.

7 Maybe you should keep track of how much it costs to
8 produce all of this. If it turns out to be totally wasteful,
9 we'll make Oracle pay for the cost involved in ginning all this
10 up, but right now I'm not going to say that it deserves that.
11 But it may be I would say that later, that Oracle has got to
12 pay 50,000 or 500,000 or whatever it costs to go gin this up.
13 But for right now, Google -- but keep track of your expenses in
14 responding to this.

15 **MR. PURCELL:** Yes, Your Honor.

16 **THE COURT:** Now, if you don't -- on the Oracle side,
17 if you don't want to wind up paying for all that -- I don't
18 know, probably you're willing to take that gamble. But it's
19 conceivable that at the end of the day, I would say you owe
20 them \$500,000 for just the expense. Probably is not that much.
21 Probably more like 50,000, but I think you should produce the
22 raw materials and let them do their best with whatever you
23 can -- with what they're requesting. That's my view from
24 30,000 feet up.

25 **MR. PURCELL:** We'll do that.

1 **THE COURT:** Great. Thank you.

2 Anything more I can help you with?

3 **MS. HURST:** No further matters, Your Honor.

4 **THE COURT:** All right. Case over. Or at least matter
5 today is over. All right.

6 (Proceedings adjourned at 10:59 a.m.)

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9 CERTIFICATE OF REPORTER

10 I certify that the foregoing is a correct transcript
11 from the record of proceedings in the above-entitled matter.

12
13 DATE: Thursday, November 12, 2015

14
15 *Pamela A. Batalo*

16 _____
17 Pamela A. Batalo, CSR No. 3593, RMR, FCRR
18 U.S. Court Reporter
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